



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 12, 2013

Mr. John C. Hall
Hall & Associates
1620 I Street, NW, Suite 701
Washington, DC 20006-4033

Subject: Freedom of Information Act Requests –
EPA-HQ-2013-005950
EPA-HQ-2013-005951

Dear Mr. Hall:

This letter responds to the two Freedom of Information Act requests listed above and reflects the clarification in your June 3, 2013, letter.

FOIA Request #EPA-HQ-2013-005950.

1. FOIA request #950 seeks records in which EPA has publicly stated its policies that water quality-based permits implementing narrative criteria need not be based on a demonstrated “cause-and-effect” relationship between the regulated pollutant and use impairment in the receiving water. Your June 3, 2013, letter clarified that the narrative criteria you mention are limited to those associated with nutrients.

The scope of this request is addressed within the scope of the requests you submitted on February 19, 2013, i.e. –

FOIA #781: “. . . any records from EPA Headquarters, developed between 1989-2005, directing states to impose nutrient limits under § 122.44(d), for waters that are not nutrient impaired.”

FOIA #782: “. . . any records informing the public that with the adoption of § 122.44(d) and any subsequent amendments, EPA has the authority to impose stringent limitations even where state waters are not listed as impaired or exhibiting signs of impairment . . . due to nutrients.”

FOIA #783: “. . . any records containing guidance, post-2005, for NPDES permit writers, on how to implement a state narrative criteria under § 122.44(d) with respect to nutrients.”

On April 19, 2013, and June 11, 2013, we responded to those requests with documents illustrating the Agency’s regulatory position that “reasonable potential to cause or contribute” suffices to trigger water quality-based nutrient limits, and that demonstration of cause and effect is not necessary. We are providing those documents again. We have conducted additional search, beyond the timeframes of those FOIA requests, and have not located any additional responsive documents.

2. FOIA request #950 (with your clarification) also seeks records in which EPA has publicly stated its policies that “application of a ‘conceptual model’ is sufficient to conclude that a pollutant is ‘causing or contributing to a narrative criteria exceedance’ and therefore, a nutrient limitation is necessary.” Your June 3 letter clarified that you are seeking general statements of policy rather than case-by-case determinations.

We do not have documents in the public record that make such statements as a matter of EPA policy.

FOIA Request #EPA-HQ-2013-005951.

2. FOIA request #951 seeks records in which EPA has publicly stated its policies that: “When applying a narrative criterion within the NPDES context, the agency will use 40 C.F.R. §122.44(d)(1)(vi) to determine if a narrative criteria is being exceeded (i.e., EPA will convert the narrative criteria into a numeric criteria and compare that numeric criteria to ambient data to determine if a criteria exceedance exists under 40 C.F.R. §122.44(d)(1)(ii)).” Again, your June 3 letter clarified that you are seeking general statements of policy rather than case-by-case determinations.

As discussed previously, we have already provided you with (and are providing again) publicly available documents that describe EPA’s interpretation of the “reasonable potential” provisions in 40 C.F.R. §122.44(d)(1). This reflects additional search on EPA’s part to reflect the scope of this FOIA request.

If you consider any portion of this response to be a denial, you may appeal it by addressing your written appeal to the National Freedom of Information Officer U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30-calendar-day limit. For quickest possible handling, the appeal letter and its envelope should be marked “Freedom of Information Act Appeal.”

The consolidated cost of providing the information in response to these two FOIA requests is \$238. You will receive an itemized invoice covering the charges for processing your request. Please forward your check or money order, made payable to the U. S. Environmental Protection Agency, within 30 days of receipt of the invoice. Your check should refer to the RIN number above and should be accompanied by the top portion of the enclosed Bill for Collection. Your prompt payment of the amount indicated will be appreciated. In a continued effort to streamline the FOIA process, EPA is now offering you the option of paying your FOIA bill on-line. There is no requirement for you to use the on-line system to pay your bill, but if you choose to do so please go to www.pay.gov and follow the simple instructions. Please be sure to have your RIN number available so that the payment can be applied to the correct charge.

Please contact me at brennan.ross@epa.gov if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ross Brennan', with a stylized, flowing script.

Ross Brennan, Associate Chief
State and Regional Branch
Water Permits Division

Enclosure